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MOK CHEE CHEONG v. PP

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN JC
[CRIMINAL APPEAL NO: WA-41H-32-07-2021]
18 FEBRUARY 2022

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Abstract – *A charge under s. 29(1) of the Minor Offences Act 1955 is defective where an ingredient of the offence, namely that the subject matter found in the accused's possession (monies in bank account) was reasonably suspected of being stolen or fraudulently obtained, was not stated in the charge. A plea to a defective charge is no plea in law; and therefore, although the accused has pleaded guilty to the (defective) charge herein, his conviction and sentence cannot stand; he ought to be retried in the court below on a proper charge.*

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CRIMINAL LAW: *Charges – Criminal charges – Offences under s. 29(1) of Minor Offences Act 1955 – Whether charges specified ingredients under s. 29(1) – Whether all ingredients of offence under s. 29(1) rightly disclosed in charge as required by law – Consequences of guilty plea – Whether charge defective – Whether retrial ordered on proper charge*

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CRIMINAL PROCEDURE: *Charges – Framing of – Offences under s. 29(1) of Minor Offences Act 1955 – Whether charges specified ingredients under s. 29(1) – Whether all ingredients of offence under s. 29(1) rightly disclosed in charge as required by law – Consequences of guilty plea – Whether charge defective – Whether retrial ordered on proper charge*

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This was an appeal against a sentence where, upon a plea of guilty by the appellant ('accused'), he was sentenced by the Magistrate to an imprisonment term of three months for an offence under s. 29(1) of the Minor Offences Act 1955 ('the Act'). The penalty provided by the section was a fine not exceeding RM1,000 or to imprisonment not exceeding one year, or to both. The accused was found to have in his possession the property of one Patrick Cheng Ther Wee in the amount of RM124,202 and failed to account satisfactorily how he came by the same. The High Court granted a stay of execution pending this appeal, ordering him to be released on RM6,000 bail. He had by then served one month of the three months imprisonment. However, before this court proceeded to consider the submissions of the appeal against the sentence put forth by the parties and decide on the appeal, the charge was examined. The ingredients of the offence convicted of the accused must surely be the following (i) that the accused had in his possession anything; (ii) which may be reasonably suspected of being stolen or fraudulently obtained; and (iii) he had failed to satisfactorily account to how it came to his possession. Reading the charge, it was apparent that the limb of whether the subject matter was reasonably suspected of being stolen or

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fraudulently obtained was missing. Before this court continued to consider and deliberate the appeal against the sentence, it was duty bound to address the issue on the charge. This court then communicated to counsel of the accused and the Deputy Public Prosecutor ('DPP') its concerns on the charge. Submissions were required to address whether (i) all the ingredients of the offence under s. 29(1) of the Act had been rightly disclosed in the charge as required by law; and (ii) the consequences of a guilty plea thereto.

Held (setting aside conviction and sentence; ordering a retrial):

(1) It was imperative for the charge in this case to state whether the subject matter found in the possession of the accused may be reasonably suspected of being stolen or fraudulently obtained. Its omission, being an ingredient of the offence, rendered the charge defective. The offence under s. 29(1) of the Act is not complete when it can be proven that the accused had in his possession anything that he could not satisfactorily account how he came to it. The offence is committed when it can be proven that the accused had in his possession anything which may be reasonably suspected to be stolen or fraudulently obtained (the option is for the prosecution to select depending on the evidence) and he failed to satisfactorily account for it. These elements of the offence must be stipulated in the charge which formed notice to the accused as to the crime he was said to have committed. (paras 15, 22 & 23)

(2) As the charge was apparently defective, the Magistrate ought to have rejected the plea of guilty. A plea of guilty to a defective charge or to an offence unknown to law is no plea at all. There is a danger in accepting the guilty plea of the accused at the Magistrate's Court. He was unrepresented and the notes of proceedings did not reflect that he had understood the alternative charge before pleading guilty. There was no notation that he had understood the nature and consequences of his plea as mandated by s. 173(b) of the Criminal Procedure Code ('CPC'). After the amendment of the particular in the alternative charge (from the sum of RM124,207 to RM124,202) although it was reflected in the notes that the accused understood, there was no record of him actually pleading guilty to the amended alternative charge nor again at that instance, that he had understood the nature and consequences of his plea. Where an accused is unrepresented, it is imperative that the court discharges its duty in ensuring that the accused knows and understands the offence alleged against him and his rights. (paras 24, 27, 28 & 29)

(3) There were no facts of the case adduced. The prosecution had referred to the alternative amended charge as the facts of the case together with the police report lodged by the complainant/victim named in the said charge, the arrest report and a copy of a page of a bank statement though does not have the name or account number but was as the accused's account and bore the fact that a sum of RM124,202 was deposited therein on the date stipulated in the charge. The facts and circumstances

in this case were apt for an order for a retrial to ensure substantial justice is done. Therefore, in accordance with s. 316(b)(i) of the CPC, this court set aside the conviction and sentence, and ordered a retrial on a proper charge. This case was remitted to the Magistrate's Court. (paras 31, 35 & 38)

Case(s) referred to:
Ah Poon & Ors v. PP [2006] 5 CLJ 521 HC ***(refd)***
Arunasalam Thevar v. PP [1956] 1 LNS 12 HC ***(refd)***
Gurdit Singh Ajaib Singh v. PP [1983] 1 CLJ 89; [1983] CLJ (Rep) 575 HC ***(refd)***
Harpajan Kaur Delib Singh v. PP [2021] 3 CLJ 704 HC ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Lim Beh & Ors v. Opium Farmer [1842] 3 Ky 110 ***(refd)***
Manokaran & Anor v. PP [1978] 1 LNS 118 HC ***(refd)***
Mathivanan Mahathevan v. PP [2018] 2 CLJ 469 HC ***(refd)***
Munusamy v. PP [1937] 6 MLJ 93 ***(refd)***
Periasamy Karuppiah & Anor v. PP [1993] 3 CLJ 46 HC ***(refd)***
PP v. Lim Yoo Hock [1984] 1 LNS 30 HC ***(refd)***
PP v. Syed Bakri [1955] MLJ 17 ***(refd)***
PP v. Uthaya Kumar Ponnusamy & Ors [2011] 1 CLJ 360 HC ***(refd)***
Salehuddin Yahya v. PP [1978] 1 LNS 17 HC ***(refd)***
Tan Boon Hock v. PP [1978] 1 LNS 194 FC ***(refd)***
Woo Hong Weng v. PP [1958] 3 MC 143 ***(refd)***
Yahya Hussein Mohsen Abdulrab v. PP [2021] 9 CLJ 414 FC ***(refd)***

Legislation referred to:
Criminal Procedure Code, ss. 173(b), 316(b)(i)
Minor Offences Act 1955, s. 29(1)

For the prosecution - Afiq Nazrin Zaharinan; DPP
For the appellant - Nik Mohamed Ikhwan Nik Mahamud & Muhammad Syazwan Mohd Salleh; M/s Nik Ikhwan & Co

[Editor's note: Appeal from Magistrate's Court; Arrest Case No: WA-83-4498-07-2021]

Reported by Suhainah Wahiduddin

JUDGMENT

Roz Mawar Rozain JC:

Introduction

[1] This is an appeal against sentence where upon a plea of guilty by the appellant (hereinafter referred to as the accused), he was sentenced on 16 July 2021 by the Magistrate to an imprisonment term of three months for an offence under s. 29(1) of the Minor Offences Act 1955 (the Act). The penalty provided by the section is a fine not exceeding RM1,000 or to imprisonment not exceeding one year, or to both.

[2] As recorded in the appeal records, the accused on 28 May 2021 was found to have in his possession the property of one Patrick Cheng Ther Wee (IC No. 580911-05-5429) in the amount of RM124,202 and failed to account satisfactorily how he came by the same.

[3] On 13 August 2021, the High Court had granted a stay of execution pending this appeal, ordering him to be released on RM6,000 bail. He had by then served one month of the three months imprisonment sentence.

Charge

[4] However, before this court proceeds to consider the submissions of the appeal against sentence put forth by parties on 10 February 2022 and decide on the appeal, the charge is examined. It is reproduced as follows:

> Bahawa kamu pada 28/05/2021 semasa berada di Bank HSBC cawangan Mont Kiara, di dalam daerah Brickfields, dalam Wilayah Persekutuan Kuala Lumpur, didapati telah memiliki harta milik Patrick Cheng Ther Wee, No KP: 580911-05-5429 iaitu wang berjumlah RM124,202.00 tanpa memberi penjelasan yang memuaskan bagaimana ia mendapatkannya. Oleh yang demikian, kamu telah melakukan satu kesalahan di bawah seksyen 29(1) Akta Kesalahan-Kesalahan Kecil 1955 (Akta 336).

[5] This court now refers to the provision of the law that stipulates the offence – s. 29(1) of the Act:

> Any person who has in his possession or conveys in any manner anything which may be reasonably suspected of being stolen or fraudulently obtained shall, if he fails to account satisfactorily how he came by the same, be liable to a fine not exceeding RM1,000 or to imprisonment for a term not exceeding one year, or to both.

[6] The ingredients of the offence convicted of the accused must surely be the following:

(i) that the accused had in his possession anything;

(ii) which may be reasonably suspected of being stolen OR fraudulently obtained; and

(iii) he had failed to satisfactorily account to how it came to his possession.

[7] Reading the charge, it is apparent that the limb of whether the subject matter was reasonably suspected of being stolen or fraudulently obtained is missing.

[8] So before this court continues to consider and deliberate the appeal against the sentence, it is duty bound to address the issue on the charge.

[9] This court then on 14 February 2022 communicated to learned counsel of the accused and the learned Deputy Public Prosecutor (DPP) its concerns on the charge. Submissions was required to address whether:

(i) all the ingredients of the offence under s. 29(1) had rightly been disclosed in the charge as required by law; and

(ii) the consequences of a guilty plea thereto.

[10] Submissions on this issue were heard on 17 February 2022.

[11] The learned Deputy Public Prosecutor for the respondent contended that the charge is correctly framed as it appears to be positively imputing the ingredients of the offence under s. 29(1) of the Act. Lord Norris' judgment in *Lim Beh & Ors v. Opium Farmer* [1842] 3 Ky 110 was quoted. There was no discussion whatsoever on the ingredients of the offence under s. 29(1) of the Act. Mentioned cursorily were only the ingredients of 'possession of property not belonging to the accused and the accused had failed to provide reasonable explanation as to how he had obtained it.'

[12] Although the case of *PP v. Syed Bakri* [1955] MLJ 17 was cited, the respondent had failed to address the other ingredient of the offence before reasonable explanation is required from the accused – that is 'reasonably suspected to be stolen property or fraudulently obtained'.

Fraudulent Possession Of Property

[13] In studying the offences under s. 29(1) of the Act, this court is guided by the case of *Woo Hong Weng v. PP* [1958] 3 MC 143 concerns the same offence. Back then it was the minor offences ordinance – the ingredients of the offence are exactly the same. It is only the quantum of punishment which differs – under the ordinance the penalty provided for was a fine not exceeding $100 or to imprisonment for a term not more exceeding three months, or to both such fine and imprisonment.

[14] The ingredients of the offence were laid out by Rigby J:

> Now for the prosecution to succeed in a charge under this section it is incumbent upon it to satisfy the Court beyond reasonable doubt:
>
> (1) That the Police Officers had grounds for suspicion at that time -– and the words "at that time" are of crucial importance – that the property in the possession of the accused was stolen property; and
>
> (2) That such suspicion was reasonable. (The case of *Munusamy v. Public Prosecutor* (2)).
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> It is only **after the prosecution has discharged the burden of proving the existence of these two essential prerequisites to the satisfaction of the Court** – not, be it noted, to the satisfaction of the Police Officer or anyone else – that the onus then shifts to the accused to account to the satisfaction of the Court as to how he came to be in possession of that

> property. As Thomson J. (as he then was) indicated in the case of *Arunasalam Thevar v. Public Prosecutor*, (3) it is not sufficient for the Magistrate simply to ask himself the question whether the accused has given a satisfactory explanation as to how he came by the article in his possession. He must first ask himself the question – and be satisfied that the answer is in the affirmative – whether the accused was carrying something that might be reasonably suspected of being stolen. Each case, of necessity, must depend upon its own facts but, generally speaking, it is of obvious importance in assisting the Court to determine whether the Police Officer's suspicion at the time was reasonable – and, indeed, whether the accused's explanation for possession of the property was, and is, satisfactory – to hear in evidence the explanation given by the accused to the Police Officer at the time when first asked to account for possession of such property.
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> (emphasis added)

[15] Therefore, it is imperative for the charge in this case to state whether the subject matter found in the possession of the accused may be reasonably suspected of being stolen or fraudulently obtained. Its omission, being an ingredient of the offence, renders the charge defective.

[16] The charge in the case of *Woo Hong Weng*, although not reproduced in the judgment reported, indicated that the only missing word from the charge was 'reasonably' though it had stated that the subject matter was suspected to be stolen. Even then Rigby J ruled that:

> The inclusion in the charge itself as drafted, and as read to the accused when called upon to plead, of the word 'reasonably' is imperative and, as Terrel Ag CJ pointed out in the *Munusamy*'s case, its omission is not a mere technicality' but 'goes to the root of the Magistrate's jurisdiction'.
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> In this case, the word 'reasonably' has been omitted from the charge ... But it is surely not asking too much of the Prosecuting Officer – and, indeed, of the trial Magistrate – to expect that a simple charge of this nature should be properly drafted. I hope that it will not again be necessary to draw attention to this fundamental defect in the drafting of a charge under this section.

[17] This court also delved further to the cases of *Munusamy v. PP* [1937] 6 MLJ 93 and *Arunasalam Thevar v. PP* [1956] 1 LNS 12; [1956] 22 MLJ 109 and finds that the alternative charge proffered against the accused which he had pleaded guilty to had only contained the first and third ingredients of the offence under s. 29(1) of the Act.

[18] Recently, the High Court had deliberated on the framing of a charge under s. 29(1) of the Act – my learned brother Dato' Mohd Radzi Abdul Hamid JC in *Harpajan Kaur Delib Singh v. PP* [2021] 3 CLJ 704 had taken issue that moneys in a bank account is considered a chose in action. It was opined that "since 'property' under s. 29(1) of the Act does not include

intangible property such as a chose in action of which monies in a bank constitutes, there could not be an offence for possession of such property under that provision."

[19] Learned counsel for the accused had relied on this case in his submission on the issue of the charge. It was submitted since the subject matter of this case is identical, being moneys in a bank account, this court should journey down the same route as the case of *Harpajan Kaur Delib Singh* and hold the charge here to be defective, pleading for the accused's conviction to be quashed and him acquitted.

[20] That specific issue is for deliberation in another forum. The matter is pending before the Court of Appeal which concerns the definition of 'anything'. It does not address whether a charge under s. 29(1) of the Act is complete and proper without stating the limb of 'reasonably suspected of being stolen or fraudulently obtained'. The said charge which was reproduced in that case also did not specify whether the subject matter of the charge was reasonably suspected of being stolen or fraudulently obtained.

[21] As submitted by learned counsel for the accused, a High Court decision at its highest is persuasive in nature unto another court of similar jurisdiction. At this juncture, this court is minded that it can be argued that the word 'anything' in s. 29(1) of the Act encompasses everything from tangible property to intangible property which includes chose in action, to name a few. However, it does not address the omission of the second ingredient of the charge. Thus, returning to the point on the framing of a charge, this court would like to emphasise that it is imperative that the charge must be framed properly and legally.

[22] The offence under s. 29(1) of the Act is not complete when it can be proven that the accused had in his possession anything that he could not satisfactorily account how he came to it. The offence is committed when it can be proven that the accused had in his possession anything which may be reasonably suspected to be stolen or fraudulently obtained (the option is for the prosecution to select depending on the evidence) and he fails to satisfactorily account for it.

[23] These elements of the offence must be stipulated in the charge which forms notice to the accused as to the crime he is said to have committed. As held by Abang Iskandar JC (as he then was) in *PP v. Uthaya Kumar Ponnusamy & Ors* [2011] 1 CLJ 360:

> The purpose of a charge, to my mind, is primarily to ensure that a person who is being accused of a criminal offence, is given due notice of the offence as mentioned in the charge. Invariably, in most cases, it defines what the offence is all about. Generally, in doing so, the charge bears out the essential ingredients of the offence contained in the charge and in so doing, the accused is given the earliest legal notice that his impugned

conduct has come to be within the legal sphere of a definitive criminal offence. In the case of *Lim Beh & Ors v. Opium Farmer* [1842] 3 Ky 110, the accused was convicted on a charge framed as 'infringing the Opium Regulation'. The accused appealed on the ground that the charge preferred against him was vague. The High Court agreed and said:

> If there be one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may know what he is charged and may be prepared to answer the charge in the best way.

So, in the main, a charge is about the notification of the legal elements of the offence which the accused has the right to know in order that he will be able to prepare his defence and be prepared and ready to usefully face the charge during trial. If a charge does not sufficiently bear out the essential feature(s) of the offence, it may become a charge for an offence that is not known in law, and as such it becomes liable to dismissal by the court because it is then a groundless charge and that the accused has been embarrassed in the preparation of his defence. A groundless charge may be dismissed under s. 173(g) CPC.

Guilty Plea To A Defective Charge

[24] As the charge is apparently defective, the Magistrate ought to have rejected the plea of guilty. A plea of guilty to a defective charge or to an offence unknown to law is no plea at all.

[25] With reference to *Mathivanan Mahathevan v. PP* [2018] 2 CLJ 469, it was found that the amended charge which the accused in that case had pleaded guilty to was defective and a nullity as the charge did not reflect the main ingredients of the offence and thus did not disclose any offence under the Act applied in that case. In finding that the acceptance of the plea of guilty in such circumstance would amount to a failure of justice and ordered for a retrial, Vazeer Alam Mydin Meera J (as he then was) held:

> The importance of properly framing a charge cannot be understated. Section 152(1) CPC requires every charge to clearly state the offence with which the accused is charged. There is a specific duty imposed on the prosecution to frame the charge with sufficient particulars so that the accused is given adequate notice.

[26] It is well settled law that even when an accused person is convicted by a Magistrate on his own plea of guilty and is precluded from appealing under s. 305 of the CPC, the appellate court can always in a proper case exercise its powers of revision – *PP v. Lim Yoo Hock* [1984] 1 LNS 30; [1984] 1 MLJ 309. This is so especially when a plea of guilty to an offence unknown to the law is no plea at all and that this court can exercise its powers of revision. Edgar Joseph Jr J (as he then was) quashed the conviction and directed a retrial on a proper charge in contravention of the said provision of the law.

[27] Upon scrutiny of the appeal records, this court finds that there is a danger in accepting the guilty plea of the accused at the Magistrate's Court. He was unrepresented and the notes of proceedings do not reflect that he had understood the alternative charge before pleading guilty. There was no notation that he had understood the nature and consequences of his plea as mandated by s. 173(b) of the Criminal Procedure Code (CPC).

[28] After the amendment of the particular in the alternative charge (from the sum of RM124,207 to RM124,202), although it is reflected in the notes that the accused understood, there was no record of him actually pleading guilty to the amended alternative charge nor again at that instance, that he had understood the nature and consequences of his plea.

[29] This court acknowledges that where an accused is unrepresented, it is imperative that the court discharges its duty in ensuring that the accused knows and understands the offence alleged against him and his rights.

[30] Nevertheless, this court leans on the authorities in finding a plea (whether unequivocal or otherwise) to a defective charge is no plea at all.

This Court's Powers

[31] Here, there was no facts of the case adduced. The prosecution had referred to the alternative amended charge as the facts of the case together with the police report lodged by the complainant/victim named in the said charge (P1), the arrest report (P2) and a copy of a page of an RHB Bank Berhad bank statement (P3) though does not have the name or account number but was as the accused's account and bears the fact that a sum of RM124,202 was deposited therein on the date stipulated in the charge. All these were admitted to by the accused. For ease of reference, the excerpt at p. 3 appeal records jilid 2 is reproduced herein:

> TPR: Fakta kes seperti mana pertuduhan, laporan pengadu yang ditandakan sebagai P1, laporan tangkapan sebagai P2, bahagian akaun Tertuduh yang relevan sebagai P3. Saya pohon penyata akaun dicamkan.

[32] The appeal records show further evidence admitted to by the accused that includes:

(i) the complainant/victim imparted with his money in the sum of RM124,202 for the purposes of investment to MCMI Securities Sdn Bhd bearing the RHB Bank Berhad account no 21206800105252 but had not received any returns or granted the demand of the moneys deposited (jilid 3 – P1);

(ii) that accused confirmed that only he can withdraw the said money from the bank account; and

(iii) the accused admitted that the company is his company and he is the sole owner of it.

Excerpt from p. 8 appeal records jilid 2 below shows the surmise of the evidence admitted by the accused:

MAH : Tapi disahkan selama ini hanya tertuduh sahaja yang boleh akses akaun ini, boleh keluarkan wang daripada akaun ini, dan tertuduh ini juga tidak pernah bagi akaun ini kepada sesiapa pun?

OKT: Ya Puan. Tidak bagi pada sesiapa.

MAH: Tertuduh adalah company ini adakah sebagai company director atau pemilik tunggal?

MAH: Pemilik tunggal.

[33] This court hereafter refers to the decision in *Periasamy Karuppiah & Anor v. PP* [1993] 3 CLJ 46; [1993] 2 MLJ 551 where on appeal, that case as with this, though no parties drew attention to the validity of the charge, Visu Sinnadurai J as he then was had exercised its revisionary powers as provided for under Courts of Judicature Act 1964 and CPC. References are made to *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163, *Manokaran & Anor v. PP* [1978] 1 LNS 118 and *Gurdit Singh Ajaib Singh v. PP* [1983] 1 CLJ 89; [1983] CLJ (Rep) 575. It was stipulated in that case that:

> In cases, however, *where the facts disclosed establish that an accused who had then been convicted on a charge which was defective as it did not constitute an offence but, could have been charged under a different provision of the law, a retrial may be ordered*: see *PP v. Lim Yoo Hock* [1984] 1 LNS 30 per Edgar Joseph Jr J (as he then was). Similarly, it has also been observed by the then Court of Appeal that even though the charge disclosed no offence, but if during the trial there was evidence to indicate that the accused could have been convicted of another offence, *the defect in the charge might have been cured by the application of s. 156 Criminal Procedure Code: PP v. Choy Kok Kuan [1958] 1 LNS 47*.
>
> Therefore, it appears that in such a situation where the charge is defective as not disclosing an offence known to the law, the courts may regard the trial as a nullity without a retrial being ordered; or *if it appears to the court that the evidence discloses the commission of some other offences, a retrial may be ordered with a proper charge being framed*.
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> (emphasis added)

[34] There is also a third option cited which is to proceed to substitute the offence stated in the charge to another offence under a different section of the law. This court take cognisance that the third option should be carefully and rarely adopted.

[35] In arriving at its decision, this court is mindful of the decision in *Yahya Hussein Mohsen Abdulrab v. PP* [2021] 9 CLJ 414 and unlike the facts there, facts and circumstances in this case are apt for an order for a retrial to ensure substantial justice is done. Here, the alleged offence is said to have been committed under nine months ago. The facts in *Ah Poon & Ors v. PP* [2006] 5 CLJ 521 are distinguished as well.

[36] This court is also guided by the decision of the Federal Court in *Tan Boon Hock v. PP* [1978] 1 LNS 194 that reiterate the powers of this court in appeal:

> The power of an appellate court to order a retrial on a proper charge before another Magistrate when it is of the opinion that an accused was convicted on a wrong charge is discretionary. In the present case since it was held that there was no proper charge ordering a retrial is most appropriate.

[37] Reiterated in *Salehuddin Yahya v. PP* [1978] 1 LNS 176; [1979] 2 MLJ 138 in dealing with the question of retrial at p. 139 "I would point out that s. 316(b) of the CPC gives an appellate court a discretionary power in suitable cases to order a retrial. That the power is discretionary is not disputed and indeed beyond argument."

[38] Therefore, based on the facts and circumstances of this case, this court in accordance with s. 316(b)(i) of the CPC sets aside the conviction and sentence, and orders a retrial on a proper charge. This case is remitted to the Magistrate's Court.

[39] As stated in all the cases referred to above, this court too reminds the prosecution that it is utmost essential to ensure that the charge comprises all the ingredients of the offence to ensure that the case against the accused is properly mounted. The journey in criminal court to ensure justice for all, starts with the charge.